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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re RFA Inc.

Serial No. 76406229

Daina J. Nathanson of Drummond, Woodsum & MacMahon for RFA Inc.

Susan Leslie DuBois, Trademark Examining Attorney, Law Office 111 (Craig Taylor, Managing Attorney).

Before Chapman, Bottorff and Rogers, Administrative Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark RAIN FOREST TILAPIA (in typed form) for goods identified in the application as "fish."¹

At issue in this appeal is the Trademark Examining Attorney's final refusal to register applicant's mark on the ground that it is merely descriptive of the identified

¹ Serial No. 76406229, filed on May 9, 2002. The application is based on applicant's assertion of a bona fide intent to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

goods. See Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). The appeal has been fully briefed, but no oral hearing was requested. We affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services

because of the manner of its use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). See also *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

Applying these principles in the present case, we find that RAIN FOREST TILAPIA is merely descriptive of the goods identified in the application, i.e., "fish." It immediately and directly informs purchasers that applicant's fish is tilapia fish, and that it is produced in the rain forest.

The Trademark Examining Attorney has made of record the following dictionary definition of "tilapia": "Any of various cichlid fishes of the genus *Tilapia*, native to Africa but introduced elsewhere as a valuable food fish." (The American Heritage Dictionary of the English Language

(3d ed. 1992)). Applicant itself, on its website (printouts of which applicant has made of record), uses "tilapia" descriptively and indeed generically to refer to its fish:

Rain Forest's sister company, Aquacorporacion Internacional, owns and operates a **tilapia** farm in Costa Rica. Rain Forest also sources fresh and frozen product from **Tilapia** producers in Ecuador and other countries.

Hailed as "the fish of the new millenium" and "the new orange roughy," **Tilapia** (pronounced Til AH pe ah) has rapidly gained consumer recognition in the United States. ... **Tilapia** traces its origin to the Nile River and has been farm raised for decades. ... Aristotle is believed to have given the fish its name **Tilapia** niloticus (fish of the Nile) in 300 BC. Legend says that **tilapia** was the fish Christ multiplied a thousandfold to feed the masses.

Types of **Tilapia**

There are many varieties of **tilapia**. However, the two best suited for aquaculture are the red **tilapia** (*Oreochromis mossambica*) and the black **tilapia** (*Oreochromis niloticus*). ... Fillets of both red and black **tilapia**, when raised correctly, will have a similar, mild taste. Since **Tilapia** absorbs flavor from the water its [sic] raised in, wild **tilapia** can have a muddy or inconsistent flavor while aquacultured **tilapia** with reliable water sources, the right feed, and carefully monitored growth will taste mild and sweet. It is important to buy **tilapia** from a company with a reliable water source.

Based on this evidence (including applicant's own usage), we find that "tilapia" is a merely descriptive and indeed generic term as applied to fish.

We also find that RAIN FOREST is merely descriptive of applicant's goods because it immediately and directly informs purchasers of a characteristic or attribute of applicant's tilapia fish, i.e., that it is raised or farmed in a rain forest setting.² The Trademark Examining Attorney has made of record excerpts of articles obtained from the NEXIS electronic database which inform readers that tilapia fish can come from the rain forest; indeed, most of these articles use the term "rain forest tilapia" generically to refer to such fish:

...cast a wide contemporary American net, with lots of lighter beef and seafood dishes as well as pastas. Spice-crusted **rain-forest tilapia**, or Hawaiian sunfish, comes with Indian-inspired basmati pilaf, tomato chutney and raita (\$17.50).
(San Jose Mercury News, March 15, 2002);

² The Board notes that in three registrations already owned by applicant (printouts of which were attached to the Trademark Examining Attorney's first Office action), applicant essentially acknowledged that RAIN FOREST is not inherently distinctive as applied to applicant's fish and seafood products. Reg. No. 2083757, of the mark RAIN FOREST AQUACULTURE PRODUCTS (in typed form) for "fish and seafood raised by aquaculture," is registered on the Principal Register pursuant to Section 2(f) and with a disclaimer of AQUACULTURE PRODUCTS. Reg. No. 1910872, of the mark RAIN FOREST AQUACULTURE PRODUCTS, INC. (in typed form) for "fish and seafood raised by aquaculture," is registered on the Supplemental Register. Reg. No. 1911578, of the mark RAIN FOREST AQUACULTURE PRODUCTS, INC. (and design) for "fish and seafood raised by aquaculture," is registered on the Principal Register with a disclaimer of RAIN FOREST AQUACULTURE PRODUCTS, INC.

...politically correct **products from the rain forest - tilapia fish**, Brazil nuts, tropical fruits...

(The Houston Chronicle, January 11, 1995);

...won't find anywhere else, at least in the form offered by Crazy Fish. Among the menu items are **rain forest tilapia** (a white fish wrapped in bok choy leaves), shrimp and voodoo pasta (squid ink blackens the pasta and...)

(St. Louis Post-Dispatch, November 13, 1994);
and

...mustard greens, blue prawns from Singapore, squab with fish sauce, miniature lobster with Chiu Chow vinegar-garlic sauce, and **rain forest tilapia** fillets with sauteed foie gras.

(The Houston Chronicle, April 6, 1994).

Another NEXIS excerpt refers specifically to applicant, reporting on applicant's presence at The International Boston Seafood Show: "Tilapia seemed to be around every corner, promoted, too, by Rain Forest Aquaculture, a company in Damariscotta, Maine, that farms the fish in the rain forests of Costa Rica." (Providence Journal-Bulletin (Rhode Island), March 19, 2003.) The accuracy of this last statement, i.e., that applicant "farms the fish in the rain forests of Costa Rica," is corroborated by information from applicant's website:

Our Costa Rican Farm:

Rain Forest Aquaculture's sister company has developed over 250 acres of ponds and infrastructure at its Canas, Costa Rica site. Our unique farm utilizes the pure, crystal-

clear rain water from the cloud forests of Costa Rica.

Based on the evidence discussed above, we find that RAIN FOREST and TILAPIA are merely descriptive terms as applied to applicant's goods, i.e., "fish." We also find that the composite mark, RAIN FOREST TILAPIA, is merely descriptive of tilapia fish which is raised or farmed in a rain forest setting, like applicant's.

Applicant argues that the tilapia fish is "an aquatic African fish species having no natural nexus to terrestrial rain forests," and that the combination of "rain forest" and "tilapia" therefore results in a composite with a bizarre and incongruous meaning, like "desert lobster." We are not persuaded by this argument; indeed, RAIN FOREST TILAPIA appears to us to be a straightforward description of any tilapia, like applicant's, which in fact is farmed in the rain forest. According to applicant's own website, the rain forest environment is ideal for the farming of tilapia. One of the NEXIS stories specifically identifies tilapia fish as a "product from the rain forest," and the other stories show that "rain forest tilapia" is already a featured menu item at restaurants.

Applicant also argues that RAIN FOREST TILAPIA is not merely descriptive because it does not immediately inform

purchasers in detail of the full scope of applicant's activities, i.e., "the operation of a fish farm utilized for the growing and harvesting of tilapia, the operation of a fishmeal and fish oil plant which is used by others in the production of animal feed, and the operation of a fish processing, packaging and distribution plant." (Brief at 4.) This argument is unpersuasive, however, because the issue in this case is whether the mark is merely descriptive of the goods identified in the application, i.e., "fish." The evidence of record establishes that it is. The mere descriptiveness, *vel non*, of the term when it is considered in a different context or as applied to any other goods and services is irrelevant here.

Finally, we have considered the third-party registrations made of record by applicant, which are of marks which include either TILAPIA or RAIN FOREST and which, according to applicant, demonstrate that applicant's mark should be registered too. We are not persuaded. It is settled that we must decide each case on its own record and merits; the existence of other registered marks which arguably might have characteristics similar to applicant's

mark does not bind the Board. *See In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).³

In summary, we find that the evidence of record establishes that RAIN FOREST TILAPIA is merely descriptive of applicant's goods, i.e., "fish."

Decision: The refusal to register under Trademark Act Section 2(e)(1) is affirmed.

³ In any event, these third-party registrations do not support applicant's argument because, in each of them, the terms TILAPIA or RAIN FOREST either are disclaimed, are registered pursuant to Section 2(f), or (in one registration) are depicted in such a stylized manner that a disclaimer apparently was deemed to be unnecessary. Only one of the third-party registered marks, i.e., Reg. No. 1729630 of the mark ROCKY MOUNTAIN WHITE TILAPIA (WHITE TILAPIA disclaimed) for "fish," appears to be constructed somewhat similarly to applicant's mark. We must presume, however, that the record in that case did not include the type of clear evidence of mere descriptiveness of the composite mark which is present in this case. In its briefs, applicant also has referred to two additional third-party registrations which were not made of record prior to the appeal and which therefore will not be considered. See Trademark Rule 2.142(d). Even if we were to consider them, however, they would be of no avail to applicant. The mark CALIFORNIA TROUT (Reg. No. 2656014), for services related to the conservation of water resources for sustaining wild trout populations, is registered pursuant to Section 2(f). The mark IDAHO TROUT (and design) (Reg. No. 2604538), for fresh frozen trout, is registered with a disclaimer of IDAHO TROUT. In short, none of the third-party registrations cited by applicant would support a finding that applicant's mark RAIN FOREST TILAPIA is inherently distinctive.